THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 15156 of 1999

12-07-2006

Between:-

M/s. Kumar & Co., rep., by its Partner, Mr. V.R. Shanmugam, having its office at 56 – Green Fields, Kanagiguda, Secunderabad – 500 015.

Petitioner

And

Garrison Engineer (South), Mudford (Military Enginerring Service), Secunderabad-3 and another.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 15156 of 1999

Oral order:

Heard the learned counsel for the petitioner and the learned counsel for the respondents

This writ petition is misconceived.

The petitioner is a civil contractor, who has a continual contractual relationship with the respondents. One instance of such contractual relationship is the work of modification and alterations of building of AOC Centre under C.A.No. GE(S)/SEC/04 of 1997-98. In respect of the various amounts payable under the contract, there was agreement in some areas and in some other areas there were no disputes. The petitioner was called upon by the respondents to submit a final bill along with a certificate, which reads as under:

'It is certified that I have prepared this final bill for claiming

entire payment due to me from this contract agreement. This FB includes all claims raised by me from time to time irrespective of the fact whether they are admitted/accepted by the department or not. I now categorically certify that I have no more claims in respect of this contract beyond those already included in this FB by me and this amount so claimed by me shall be in full and final satisfaction of all my claims under this contract agreement. I shall however reserve my right to raise claim to the extent disallowed to me from this final bill.' This constitutes part-I of the final bill. Part-II of the final bill relates to the disputed part of the final bill. As the petitioner refused to sign the certificate, as insisted by the respondents, the respondents declined making payment of even the agreed amount.

The writ petition is filed alleging that the insistence by the respondents that the petitioner should sign the certificate as above, constitutes an arbitrary conduct as by the signing that certificate, the petitioner would be deprived of raising any substantial dispute/claim either before an arbitrator or before a civil court, as the case may be.

The contention of the petitioner is based on a misapprehension and a misinterpretation of the certificate required to be given by him. The certificate only requires that all the claims the petitioner intends to raise against the respondents in respect of the contract in question should be included in the final bill and beyond the final bill no claim may be submitted by the petitioner/contractor.

The certificate is very clear. The petitioner is obligated to certify that the final bill constitutes and includes the entirety of his claims under the contract, irrespective of whether the claims have been admitted/accepted by the department or otherwise. There is no arbitrariness involved in the respondents insisting that the petitioner should submit a final bill, which shall constitute the entirety of his claim in respect of contracts in question.

There are no merits. The writ petition is dismissed. No costs.

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GODA RAGHURAM, J

Dated:12-07-2006
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